

HOUSE BILL NO. 315

INTRODUCED BY LAWSON

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4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING AN EXCEPTION FROM THE REQUIREMENT TO PAY
5 STANDARD PREVAILING WAGES FOR ~~A CONTRACTOR~~ AN EMPLOYER WHO, AS A NONPROFIT
6 ORGANIZATION PROVIDING VOCATIONAL REHABILITATION, PERFORMS A PUBLIC WORKS CONTRACT
7 FOR NONCONSTRUCTION SERVICES AND WHO EMPLOYS AN INDIVIDUAL WHOSE EARNING CAPACITY
8 IS IMPAIRED BY A MENTAL, EMOTIONAL, OR PHYSICAL DISABILITY IF THE ~~CONTRACTOR~~ EMPLOYER
9 CONFORMS WITH THE FEDERAL FAIR LABOR STANDARDS ACT AND PAYS THE INDIVIDUAL WAGES
10 THAT ARE EQUAL TO OR ABOVE THE STATE'S MINIMUM WAGE; AMENDING SECTIONS 18-2-403 AND
11 18-2-407, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

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13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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15 **Section 1.** Section 18-2-403, MCA, is amended to read:
16 **"18-2-403. Preference of Montana labor in public works -- wages -- tax-exempt project -- federal**
17 **exception.** (1) In every public works contract, there must be inserted in the bid specification and the public works
18 contract a provision requiring the contractor to give preference to the employment of bona fide residents of
19 Montana in the performance of the work.
20 (2) All public works contracts for construction services under subsection (1), except those for heavy and
21 highway construction, that are conducted at the project location or under special circumstances must contain
22 a provision requiring the contractor to pay:
23 (a) the travel allowance that is in effect and applicable to the district in which the work is being
24 performed; and
25 (b) the standard prevailing rate of wages, including fringe benefits for health and welfare and pension
26 contributions, that:
27 (i) meets the requirements of the Employee Retirement Income Security Act of 1974 and other bona
28 fide programs approved by the United States department of labor; and
29 (ii) is in effect and applicable to the district in which the work is being performed.
30 (3) In every public works contract for heavy and highway construction, there must be inserted a

1 provision to require the contractor to pay the heavy and highway construction wage rates established statewide
 2 for heavy and highway construction services conducted at the project location or under special circumstances.

3 (4) ~~All~~ Except as provided in subsection (5), all public works contracts for nonconstruction services
 4 under subsection (1) must contain a provision requiring the contractor to pay:

5 (a) the travel allowance that is in effect and applicable to the district in which the work is being
 6 performed; and

7 (b) the standard prevailing rate of wages, including fringe benefits for health and welfare and pension
 8 contributions, that:

9 (i) meets the requirements of the Employee Retirement Income Security Act of 1974 and other bona
 10 fide programs approved by the United States department of labor; and

11 (ii) is in effect and applicable to the district in which the work is being performed.

12 ~~(5) A contractor~~ AN EMPLOYER who, as a nonprofit organization providing individuals with vocational
 13 rehabilitation, performs a public works contract for nonconstruction services and who employs an individual
 14 whose earning capacity is impaired by a mental, emotional, or physical disability may pay the individual wages
 15 that are less than the standard prevailing wage if the contractor EMPLOYER complies with the provisions of section
 16 214(c) of the Fair Labor Standards Act of 1938, 29 U.S.C. 214 and 29 CFR, part 525, and the wages paid are
 17 equal to or above the minimum wage required in 39-3-404.

18 ~~(5)(6)~~ Transportation of goods, supplies, materials, and manufactured or fabricated items to or from the
 19 project location is not subject to payment of the standard prevailing rate of wages.

20 ~~(6)(7)~~ A contract, other than a public works contract, let for a project costing more than \$25,000 and
 21 financed from the proceeds of bonds issued under Title 17, chapter 5, part 15, or Title 90, chapter 5 or 7, ~~on or~~
 22 ~~after July 1, 1993~~; must contain a provision requiring the contractor to pay the standard prevailing wage rate in
 23 effect and applicable to the district in which the work is being performed unless the contractor performing the
 24 work has entered into a collective bargaining agreement covering the work to be performed.

25 ~~(7)(8)~~ A public works contract may not be let to any person, firm, association, or corporation refusing
 26 to execute an agreement with the provisions described in subsections (1) through ~~(6)~~ (7) in it, provided that in
 27 public works contracts involving the expenditure of federal-aid funds, this part may not be enforced in a manner
 28 as to conflict with or be contrary to the federal statutes prescribing a labor preference to honorably discharged
 29 veterans of the armed forces and prohibiting as unlawful any other preference or discrimination among citizens
 30 of the United States.

1 ~~(8)~~(9) Failure to include the provisions required by 18-2-422 in a public works contract relieves the
 2 contractor from the contractor's obligation to pay the standard prevailing wage rate and places the obligation on
 3 the public contracting agency."

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5 **Section 2.** Section 18-2-407, MCA, is amended to read:

6 **"18-2-407. Forfeiture for failure to pay standard prevailing wage.** (1) ~~Any~~ Except as provided in
 7 18-2-403, a contractor, subcontractor, or employer who pays workers or employees at less than the standard
 8 prevailing wage as established under the public works contract shall forfeit to the department a penalty at a rate
 9 of up to 20% of the delinquent wages plus fringe benefits, attorney fees, audit fees, and court costs. Money
 10 collected by the department under this section must be deposited in the general fund. A contractor,
 11 subcontractor, or employer shall also forfeit to the employee the amount of wages owed plus \$25 a day for each
 12 day that the employee was underpaid.

13 (2) Whenever it appears to the contracting agency or to the Montana commissioner of labor and industry
 14 that there is insufficient money due to the contractor or the employer under the terms of the contract to cover
 15 penalties, the Montana commissioner of labor and industry may, within 90 days after the filing of notice of
 16 completion of the project and its acceptance by the contracting agency, maintain an action in district court to
 17 recover all penalties and forfeitures due. This part does not prevent the individual worker who has been
 18 underpaid or the commissioner of labor and industry on behalf of all the underpaid workers from maintaining an
 19 action for recovery of the wages due under the contract as provided in Title 39, chapter 3, part 2, except that
 20 appeal of the hearings officer's decision is made directly to district court rather than to the board of personnel
 21 appeals."

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23 NEW SECTION. **Section 3. Effective date -- applicability.** [This act] is effective on passage and
 24 approval and applies to contracts entered into on or after [the effective date of this act].

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